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SUFFOLK COUNTY CLERK
RECORDS OFFICE
RECORDING PAGE

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Type of Instrument: MORTGAGE
Number of Pages: 18
Receipt Number : 19-0102363
MORTGAGE NUMBER: DK006577

Recorded: 05/29/2019
At: 04:01:15 PM

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LIBER: M00023030
PAGE: 972

District:	Section:	Block:	Lot:
0900	134.00	02.00	014.015

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EXAMINED AND CHARGED AS FOLLOWS

Mortgage Amount: $1,687,500.00

Received the Following Fees For Above Instrument

		Exempt			Exempt
Page/Filing	$90.00	NO	Handling	$20.00	NO
COE	$5.00	NO	NYS SRCHG	$15.00	NO
Affidavit	$0.00	NO	Notation	$0.00	NO
Cert.Copies	$0.00	NO	RPT	$200.00	NO
RPT-MTG Fee	$300.00	NO	Mort.Basic	$18,937.50	NO
Mort.Addl	$11,332.50	NO	Mort.SplAddl	$0.00	NO
Mort.SplAsst	$9,468.75	NO			

Fees Paid $40,368.75

MORTGAGE NUMBER: DK006577

THIS PAGE IS A PART OF THE INSTRUMENT
THIS IS NOT A BILL

JUDITH A. PASCALE
County Clerk, Suffolk County

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1 2

Number of pages 18

This document will be public record. Please remove all Social Security Numbers prior to recording.

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RECORDED
2019 May 29 04:01:15 PM
JUDITH A. PASCALE
CLERK OF
SUFFOLK COUNTY
L M00023030
P 972
DK006577

Deed / Mortgage Instrument	Deed / Mortgage Tax Stamp	Recording / Filing Stamps

3 FEES

Page / Filing Fee 95

Handling 20.00

TP-584

Notation

EA-52 17 (County) Sub Total 140

EA-5217 (State)

R.P.T.S.A. 200

Comm. of Ed 5.00

Affidavit

Certified Copy

NYS Surcharge 15.00

Other 300-

Sub Total 520

Grand Total 630

Mortgage Amt. 3,787,500

1. Basic Tax

2. Additional Tax

Sub Total

Spec./Assit.

or

Spec. /Add.

TOT. MTG. TAX 39,138.75

Dual Town ____ Dual County ____

Held for Appointment ____

Transfer Tax

Mansion Tax

The property covered by this mortgage is or will be improved by a one or two family dwelling only.

YES V or NO ____

If NO, see appropriate tax clause on page # ____ of this instrument.

4 Dist. 0(3878723 0900 13400 0200 014015 15

Real Property Tax Service Agency Verification

PTS RDTY A 28-MAY-19

5 Community Preservation Fund

Consideration Amount $ ____

CPF Tax Due $ ____

Improved ____

Vacant Land ____

TD ____

TD ____

TD ____

6 Satisfactions/Discharges/Releases List Property Owners Mailing Address
RECORD & RETURN TO:

Attn: Lending Department
Goldman Sachs Bank USA, a New York Chartered Bank
c/o Genesis Capital, LLC
15303 Ventura Boulevard, Suite 700
Sherman Oaks, CA 91403

Mail to: Judith A. Pascale, Suffolk County Clerk
310 Center Drive, Riverhead, NY 11901
www.suffolkcountyny.gov/clerk

7 Title Company Information

Co. Name National Land Tenure

Title # NLT-28964-S-18

8 Suffolk County Recording & Endorsement Page

This page forms part of the attached Mortgage made by:
(SPECIFY TYPE OF INSTRUMENT)

ROSE WAY LLC

TO

Goldman Sachs Bank USA

The premises herein is situated in SUFFOLK COUNTY, NEW YORK.

In the TOWN of SOUTHAMPTON

In the VILLAGE

or HAMLET of ____

BOXES **6** THRU **8** MUST BE TYPED OR PRINTED IN BLACK INK ONLY PRIOR TO RECORDING OR FILING.

(over)

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IMPORTANT NOTICE

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If the document you've just recorded is your SATISFACTION OF MORTGAGE, please be aware of the following:

If a portion of your monthly mortgage payment included your property taxes, *you will now need to contact your local Town Tax Receiver so that you may be billed directly for all future property tax statements.

Local property taxes are payable twice a year: on or before January 10th and on or before May 31st. Failure to make payments in a timely fashion could result in a penalty.

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Please contact your local Town Tax Receiver with any questions regarding property tax payment.

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Babylon Town Receiver of Taxes
200 East Sunrise Highway
North Lindenhurst, N.Y. 11757
(631) 957-3004

Brookhaven Town Receiver of Taxes
One Independence Hill
Farmingville, N.Y. 11738
(631) 451-9009

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East Hampton Town Receiver of Taxes
300 Pantigo Place
East Hampton, N.Y. 11937
(631) 324-2770

Huntington Town Receiver of Taxes
100 Main Street
Huntington, N.Y. 11743
(631) 351-3217

Islip Town Receiver of Taxes
40 Nassau Avenue
Islip, N.Y. 11751
(631) 224-5580

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Riverhead Town Receiver of Taxes
200 Howell Avenue
Riverhead, N.Y. 11901
(631) 727-3200

Shelter Island Town Receiver of Taxes
Shelter Island Town Hall
Shelter Island, N.Y. 11964
(631) 749-3338

Smithtown Town Receiver of Taxes
99 West Main Street
Smithtown, N.Y. 11787
(631) 360-7610

Southampton Town Receiver of Taxes
116 Hampton Road
Southampton, N.Y. 11968
(631) 283-6514

Southold Town Receiver of Taxes
53095 Main Street
Southold, N.Y. 11971
(631) 765-1803

Sincerely,

Judith A. Pascale

Judith A. Pascale
Suffolk County Clerk

dw
2/99

12-0104.. 06/06kd

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WHEN RECORDED MAIL TO:

Goldman Sachs Bank USA,
a New York chartered bank
c/o Genesis Capital, LLC
ATTENTION: LENDING DEPARTMENT
15303 Ventura Boulevard, Suite 700,
Sherman Oaks, CA 91403

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APN(S): District: 0900 Section: 134.00 Block 02.00 Lot 014.015

FOR RECORDER'S USE ONLY

Loan No. G19017247

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MORTGAGE

MAXIMUM LIEN. The lien of this Mortgage shall not exceed at any one time **$3,787,500.00.**

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The Property covered by this Mortgage is or will be secured by other than a 1 or 2 family residence.

THIS MORTGAGE dated 4/18/2019, is made and executed by Rose Way LLC, a New York limited liability company (whose address is 71 Phillips Lane, Southampton, New York 11968 (referred to below as "Grantor") in favor of Goldman Sachs Bank USA, a New York chartered bank, whose address is: c/o Genesis Capital, LLC, 15303 Ventura Boulevard, Suite 700, Sherman Oaks, CA 91403 (referred to below as "Lender").

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GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, grants, and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, **(the "Real Property") located in Suffolk County, State of New York:**

See EXHIBIT A, which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.

The Real Property or its address is commonly known as 114 Rose Way, Bridgehampton, NY 11932. The Real Property tax identification number is District: 0900 Section: 134.00 Block 02.00 Lot 014.015.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF LEASES AND RENTS, AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PAYMENT AND PERFORMANCE OF ANY AND ALL OBLIGATIONS OF THE GRANTOR UNDER THE LOAN AGREEMENT, THE NOTE, THE RELATED DOCUMENTS, AND THIS MORTGAGE. ANY EVENT OF DEFAULT UNDER THE LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Loan Agreement, the Note, this Mortgage, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

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Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance with Environmental Laws. Grantor represents and warrants to Lender that: (1) during the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) except as previously disclosed to and acknowledged by Lender in writing, neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be at Grantor's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any applicable laws, and (2) agrees to indemnify, defend and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of Hazardous Substances on, under, about or from the Property, including, without limitation, if occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Mortgage, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage, the Loan Agreement and the other Related Documents.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon nor leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

AGREEMENTS ABOUT NEW YORK LIEN LAW. Grantor shall receive all amounts lent to Grantor by Lender subject to the trust fund provisions of Section 13 of the New York Lien Law.

DUE ON SALE OR ENCUMBRANCE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon a Sale or Transfer. A "Sale or Transfer" means (x) the sale, transfer, mortgage, assignment, encumbrance, lease or conveyance of all or any portion of the Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of sale, transfer, mortgage, assignment, encumbrance, lease or conveyance of an interest in the Real Property, and (y) if Grantor is a corporation, partnership, limited liability company, joint venture, estate or trust (a) the transfer, assignment, pledge, encumbrance or conveyance of more than twenty-five percent (25%) of the direct or indirect legal or beneficial interests in such entity or (b) any change in the control or management of such entity, even if the change in control or management entails a change in ownership of less than twenty-five percent (25%).

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

Payment. Grantor shall pay when due all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens other than liens for taxes, assessments, or governmental charges or levies not yet delinquent or payable without penalty or interest, and such liens and encumbrances as may be approved in writing by the Lender.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other

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changes that could arise as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Mortgage:

Maintenance of Insurance. Without limiting the provisions in the Loan Agreement with respect to insurance, Grantor shall procure and maintain (i) policies of fire insurance with standard extended coverage endorsements on a fair value basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with Lender named as the loss payee thereunder, (ii) comprehensive general liability insurance in such coverage amounts as Lender may request (but not less than $1,000,000 per occurrence and $2,000,000 in the aggregate) with Lender being named as additional insureds in such liability insurance policies, (iii) such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require, and (iv) if the Real Property is located in an area identified by the Federal Emergency Management Agency or the Federal Insurance Administration as a "100 year flood plain" or as having special flood hazards (including Zones A and V), flood insurance, if available, for the full unpaid principal balance of the Loan and any prior liens on the property securing the Loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan. Notwithstanding the foregoing, in no event shall Grantor be required to provide hazard insurance in excess of the replacement value of the improvements on the Real Property. Policies shall be written in form, amounts, coverages and basis acceptable to Lender and issued by a company or companies acceptable to Lender and shall not exclude vacant properties for any type of dwellings. Grantor, upon request of Lender, will deliver to Lender from time to time copies of the policies of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if an Event of Default exists or Grantor fails to do so within fifteen (15) days of the casualty. All insurance proceeds in connection with a casualty shall be due and payable solely to Lender, and if Grantor or any other party other than Lender receives any insurance proceeds, Grantor shall immediately deliver such proceeds to Lender and shall endorse, or cause all such third parties to endorse, checks payable therefor to the order of Lender. Grantor hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to endorse any such check payable to the order of Lender. Lender may, at Lender's election, retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If the proceeds are to be applied to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if no Event of Default exists. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under the Loan Agreement, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Compliance with Existing Indebtedness. During the period in which any Existing Indebtedness described below is in effect, compliance with the insurance provisions contained in the instrument evidencing such Existing Indebtedness shall constitute compliance with the insurance provisions under this Mortgage, to the extent compliance with the terms of this Mortgage would constitute a duplication of insurance requirement. If any proceeds from the insurance become payable on loss, the provisions in this Mortgage for division of proceeds shall apply only to that portion of the proceeds not payable to the holder of the Existing Indebtedness.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Mortgage or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the Default Rate from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. This Mortgage also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon an Event of Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Mortgage:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

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Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance with Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

EXISTING INDEBTEDNESS. The following provisions concerning Existing Indebtedness are a part of this Mortgage:

Existing Lien. The lien of this Mortgage securing the Indebtedness may be secondary and inferior to an existing lien. Grantor expressly covenants and agrees to pay, or see to the payment of, the Existing Indebtedness and to prevent any default on such indebtedness, any default under the instruments evidencing such indebtedness, or any default under any security documents for such indebtedness.

No Modification. Grantor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Mortgage by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Lender.

CONDEMNATION. The following provisions relating to eminent domain and condemnation proceedings are a part of this Mortgage:

Proceedings. If any eminent domain or condemnation proceeding is commenced affecting the Property, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to pursue or defend the action and obtain the award. Grantor may be the nominal party in any such proceeding, but Lender shall be entitled, at its election, to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. Any award or settlement proceeds in connection with any eminent domain or condemnation proceedings shall be due and payable solely to Lender, and Grantor or any other party other than Lender receives any such award or settlement proceeds, Grantor shall immediately deliver such award or settlement proceeds to Lender. If any award is made or settlement entered into in any condemnation proceedings affecting all or any part of the Property or by any proceeding or purchase in lieu of condemnation, Lender may at its election, require that all or any portion of the award or settlement proceeds be applied to the Indebtedness and to the repayment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the eminent domain or condemnation proceedings.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on all or any portion of the Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS; FIXTURE FILING. The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes Personal Property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code.

Security Interest. Grantor, by executing this Mortgage, hereby grants Lender a first and prior security interest in the Personal Property to secure the Indebtedness and agrees that Lender will have all the rights and remedies of a secured party under the Uniform Commercial Code. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon the occurrence of an Event of Default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon an Event of Default, Grantor shall, at Grantor's expense, assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

Fixture Filing. As to all of the Personal Property which is or which hereafter becomes a "fixture" under applicable law, it is intended by Grantor and Lender that this Mortgage constitutes a fixture filing filed with the real estate records of the County in which

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the Real Property is located under the Uniform Commercial Code. For purposes of this fixture filing, the "Debtor" is the Grantor and the "Secured Party" is the Lender. A description of the land which relates to the fixtures is set forth in Exhibit A attached hereto.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Loan Agreement, the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Grantor pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, following Grantor's payment in full of the Indebtedness, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

Payment Default. Any regular monthly debt service payment under the Note is not paid when due, or any other amount secured by this Mortgage (including but not limited to any payment of principal or interest due on the Maturity Date, as defined in the Note, any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien) is not paid so that it is received by Lender when due.

Other Defaults. Grantor fails to comply with or to perform any term, obligation, covenant or condition contained in this Mortgage that is not otherwise listed as an Event of Default hereunder (a "Secured Default").

Cross Default. A default (following the expiration of all applicable notice and cure periods) occurs under any of the other Related Documents.

Indebtedness; Liens; Sale or Transfer. (1) Except for trade debt incurred in the normal course of business and indebtedness to Lender contemplated by this Mortgage or the Loan Agreement, if Grantor creates, incurs or assumes indebtedness for borrowed money, including capital leases, (2) if Grantor engages in any Sale or Transfer, (3) if Grantor sells with recourse any of Grantor's accounts, except to Lender, (4) if Grantor grants any junior lien or security interest in, or mortgage of, all or any portion of the Property, or (5) if Grantor enters into any agreement with any Person other than Lender that prohibits Grantor from granting any security interest in, or mortgage of, all or any portion of the Property.

Default in Favor of Third Parties. Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the Indebtedness or Grantor's ability to perform Grantor's obligations under the Loan Agreement, this Mortgage or any of the other Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under the Loan Agreement, this Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Mortgage, the Loan Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Dissolution. The dissolution of Grantor (regardless of whether election to continue is made), or if any member, partner, or equity holder withdraws from Grantor, or any other termination of Grantor's existence as a going business or the death of any member, partner or equity holder of Grantor.

Bankruptcy or Insolvency. The insolvency of Grantor, or the appointment of a receiver for any part of Grantor's property, or Grantor makes any assignment for the benefit of creditors, or Grantor engages in any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor (any of the foregoing, a "Bankruptcy Default").

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Existing Indebtedness. The payment of any installment of principal or any interest on the Existing Indebtedness is not made within the time required by the promissory note evidencing such indebtedness, or a default occurs under the instrument securing such indebtedness and is not cured during any applicable grace period in such instrument, or any suit or other action is commenced to foreclose any existing lien on the Property.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender, or any Affiliate of Grantor and Lender, that is not remedied within any grace period provided therein, including without limitation any

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agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Condemnation. All or any material portion of the Collateral is condemned, seized, or appropriated without compensation, and Grantor does not within thirty (30) days after such condemnation, seizure, or appropriation, initiate and diligently prosecute appropriate action to contest in good faith the validity of such condemnation, seizure, or appropriation.

Insurance. If Grantor fails to maintain in full force and effect the insurance required hereunder.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty, or if any guarantor of the Loan is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property.

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Judgment. A judgment or judgments for the payment of money rendered against Grantor or any Guarantor in excess of $50,000.00 in the aggregate, and any such judgment remains unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution.

Lien. Any lien (including mechanics lien) is issued or levied on all or any portion of the Property and Grantor has not cured within fourteen (14) days.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If any General Default is curable and if Grantor has not been given a notice of a breach of the same provision of this Mortgage within the preceding six (6) months, it may be cured if Grantor, after Lender sends written notice to Grantor demanding cure of such General Default: (1) cures the General Default within five (5) days; or (2) if the cure requires more than five (5) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the General Default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical, provided that under no circumstances shall Grantor have more than thirty (30) days to cure any General Default.

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RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Mortgage, at any time thereafter, Lender may exercise any one or more of the following rights and remedies:

Accelerate Indebtedness. Lender may declare the unpaid principal balance of the Indebtedness due and payable; provided, however, that, notwithstanding the foregoing, if a Bankruptcy Default occurs, then the Indebtedness shall immediately become due and payable without the giving of any notice or other action by Lender. In no event will Grantor be required to pay any unearned interest.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code, including without limitation the right to recover any deficiency in the manner and to the full extent provided by New York law.

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Collect Rents. Lender shall have the right, without notice to Grantor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact, coupled with an interest, to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right, without notice to any person, to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to complete any unfinished construction on the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and to sell the Property and apply the proceeds of such Rents and sale, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount and without regard to the solvency of Grantor. Employment by Lender shall not disqualify a person from serving as a receiver.

Judicial Foreclosure. Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

Nonjudicial Sale. Grantor gives Lender a power of sale over Grantor's interest in all or in any part of the Personal Property or the Real Property subject to the Mortgage. This means that Lender will be authorized to sell all property subject to the Mortgage in connection with a non-judicial foreclosure proceeding. Lender is authorized to commence a non-judicial foreclosure proceeding as may be permitted by applicable law, including Article 14 of the New York Real Property Actions and Proceedings Law and any amendments or successors to that law.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Lender shall have any other right or remedy provided in this Mortgage, the Note, the Loan Agreement, the other Related Documents or available at law or in equity.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

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Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the Indebtedness.

No Beneficiary in Possession. None of the remedies afforded to Lender under the Related Documents, at law or in equity shall cause Lender to be deemed or construed to be a mortgagee in possession of the Property, to obligate Lender to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any lease or otherwise.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender will be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness. Expenses covered by this paragraph include, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

NOTICES. Any notice required to be given under this Mortgage shall be given in writing, and shall be effective when actually delivered, when sent by electronic mail prior to 5:00 p.m. (Pacific Standard Time or Pacific Daylight Time as applicable, on a Business Day) (unless otherwise required by law) provided that a copy is simultaneously sent by one of the other permitted means of giving notice set forth in this section, or one (1) Business Day after being deposited with a nationally recognized overnight courier, directed to the addresses shown near the beginning of this Mortgage. Grantor requests that copies of any notices of default and sale be directed to Grantor's address shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties in accordance with the terms of this paragraph, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

SALE OR ASSIGNMENT. Grantor agrees that Lender may elect, at any time, to sell or otherwise assign any Note, any Security Agreement that secures it and the obligations and that any such sale or assignment may be to one or more financial institutions, private investors and/or other persons or entities (each, an "**Assignee**"), in Lender's sole and absolute discretion. Additionally, Grantor hereby agrees that the obligations, the Collateral and Lender's rights and remedies under any Related Document may be assigned to any Assignee without any further action under any Related Document or any consent by, or notice to, Grantor, Guarantor or any other Person. In connection with any such sale or assignment, Grantor further agrees as follows: (a) Lender may disseminate to any such actual or prospective Assignee(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Lender with respect to: (1) the Loan, including any Note, any Security Agreement, any loan advances, any Property and Improvements encumbered by any Security Agreement and its operation; (2) Grantor, any Guarantor and any other party connected with the Loan (including, without limitation, any constituent partner, joint venturer or member of Grantor, or any Guarantor); and/or (3) any lending relationship other than the Loan that Lender may have with any such party connected with the Loan or any of their affiliates; (b) Lender may be authorized by the Assignee to act as loan servicing agent on Assignee's behalf in connection with any Note or Security Agreement assigned and the Obligations and, in connection therewith, to exercise the rights and obligations of Lender set forth in the Related Documents as agent for the Assignee; (c) the Related Documents shall be sufficient evidence of the obligations of Grantor to each Assignee, and upon written request by Lender, Grantor shall enter into such amendments or modifications to the Related Documents as may be reasonably required in order to evidence any such sale or assignment; (d) the indemnity obligations of Grantor under the Loan Agreement and all other Related Documents shall also benefit and be enforceable by any Assignee and; (e) the sale or assignment of a Note and its related Security Agreement or any obligations shall not be deemed to have reduced the total principal amount outstanding under the Loan.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Mortgage:

Amendments. This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by Grantor and Lender.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Arbitration; Jury Waiver. Grantor and, by its acceptance hereof, Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Mortgage or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party; provided, however, in the event of an Event of Default by Grantor, Lender shall have the unilateral right to exercise its remedies in its sole and absolute discretion, and under such circumstances, Lender can choose in its sole discretion to pursue arbitration or not and Grantor hereby waives any right to enforce the arbitration provisions of this Mortgage if contrary to the choice of Lender. No act by or on behalf of Lender to exercise rights and remedies with respect to the Property in the event of an Event of Default by Grantor (including any action to take, foreclosure upon, realize upon or dispose of any Property) shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such

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property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning the Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Grantor and Lender agree that in the event of an action for judicial foreclosure pursuant to California Code of Civil Procedure Section 726, or any similar provision in any other state, the commencement of such an action will not constitute a waiver of the right to arbitrate and the court shall refer to arbitration as much of such action, including counterclaims, as lawfully may be referred to arbitration. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Mortgage shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision. Any arbitration, judicial reference or trial by a judge of any dispute, claim or controversy between the parties hereto will take place on an individual basis without resort to any form of class or representative action (the "Class Action Waiver"). Regardless of anything else in this Section, the validity and effect of the Class Action Waiver may be determined only by a court or referee and not by an arbitrator. Grantor and, by its acceptance hereof, Lender acknowledge that the Class Action Waiver is material and essential to the arbitration of any disputes between the parties and is nonseverable from the agreement to arbitrate all disputes, claims and controversies between the parties. If the Class Action Waiver is limited, voided or found unenforceable, then the parties' agreement to arbitrate shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver. Grantor and, by its acceptance hereof, Lender acknowledge and agree that under no circumstances will a class action be arbitrated. **WITHOUT INTENDING IN ANY WAY TO LIMIT THIS DISPUTE RESOLUTION PROVISION, GRANTOR AND, BY ITS ACCEPTANCE HEREOF, LENDER WAIVE TRIAL BY JURY IN RESPECT OF ANY AND ALL "DISPUTES" AND ANY ACTION ON ANY DISPUTE. THIS WAIVER SHALL APPLY TO THE EXTENT ANY "DISPUTE" IS NOT SUBMITTED TO JUDICIAL REFERENCE OR ARBITRATION, OR IS DEEMED BY THE ARBITRATOR, REFEREE OR ANY COURT WITH JURISDICTION TO BE NOT REQUIRED TO BE DETERMINED BY JUDICIAL REFERENCE OR ARBITRATION, OR NOT SUSCEPTIBLE OF BEING SO DETERMINED. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE PARTIES AND THE PARTIES HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE RELATED DOCUMENTS. THE PARTIES ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. GRANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. WHETHER THE CLAIM IS DECIDED BY ARBITRATION, BY JUDICIAL REFERENCE, OR BY TRIAL BY A JUDGE, THE PARTIES AGREE AND UNDERSTAND THAT THE EFFECT OF THIS AGREEMENT IS THAT THEY ARE GIVING UP THE RIGHT TO TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW.**

Captions and Headings. Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

Governing Law. This Mortgage was accepted by Lender in the State of California, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and performance, this Mortgage and the other Related Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the State of California applicable to contracts made and performed in such state and any applicable law of the United States of America, except that at all times the provisions for the foreclosure of liens and creation, perfection and enforcement of the security rights and interests created pursuant hereto and pursuant to the other Related Documents in any Collateral which is located in the state in which the Property is located shall be governed by and construed according to the law of the state where the Property is located. Except as provided in the immediately preceding sentence, Grantor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any other jurisdiction governs this Mortgage and the other Related Documents.

Jurisdiction. ANY CLAIM OR ACTION ARISING UNDER THIS MORTGAGE OR THE OTHER RELATED DOCUMENTS MAY, AT LENDER'S OPTION, BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE STATE OF CALIFORNIA, AND GRANTOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GRANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

Merger. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

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Successors and Assigns. Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Mortgage.

Joint and Several. If Grantor constitutes more than one individual or entity, the representations, covenants, warranties and obligations of Grantor hereunder are joint and several with respect to each individual or entity.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Mortgage shall first have the meanings attributed to such terms in the Loan Agreement, and if not defined in the Loan Agreement, in the Uniform Commercial Code:

Affiliate. The word "Affiliate" means any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Grantor, or that has a common guarantor with Grantor. "Control," for purposes of this definition, means direct or indirect ownership or control of more than five percent (5%) of the voting interests of the subject entity. "Person," for purposes of this definition, means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

Collateral. The word "Collateral" means all property and assets granted as collateral security for the Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

Default Rate. The words "Default Rate" have the meaning set forth in the Note.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Mortgage in the Events of Default section of this Mortgage.

Existing Indebtedness. The words "Existing Indebtedness" mean the indebtedness described in the Existing Liens provision of this Mortgage.

Grantor. The word "Grantor" means Rose Way LLC, a New York limited liability company and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Indebtedness.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note and the Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under the Loan Agreement or under any of the Related Documents.

Lender. The word "Lender" means Goldman Sachs Bank USA, a New York chartered bank its successors and/or assigns.

Loan. The word "Loan" means the loan or loans made to Grantor under this Mortgage, the Loan Agreement, the Note and the other Related Documents as described therein in a maximum principal amount of $3,787,500.00 Dollars.

Loan Agreement. The words "Loan Agreement" mean the Business Loan Agreement, dated as of 4/18/2019, by Grantor and Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the agreement.

Mortgage. The word "Mortgage" means this Mortgage by Grantor to Lender, encumbering the Property and other assets and rights therein provided, as amended, restated or otherwise modified from time to time. .

Note. The word "Note" means the promissory note dated 4/18/2019, in the original principal amount of $3,787,500.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to or located at, on or in the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the

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Personal Property. The words "Personal Property" also include all tangible and intangible items obtained or owned by, or in the possession of Grantor that are directly or indirectly related to the acquisition, development, design, construction, permitting, marketing, or habitation of the Real Property or the Improvements now existing or hereinafter constructed on the Real Property, whether heretofore or hereafter issued, prepared, or executed, including without limitation all permits, licenses, authorizations and approvals, trademarks and tradenames, and any and all land use entitlements, development rights, sewer capacity, approvals, density allocations and other rights or approvals relating to or authorizing the development or occupancy of the Property, plus all utility or other deposits, reimbursement rights, studies, tests, contracts, plans and specifications, relating to the Property and Improvements.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future leases, rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property together with the cash proceeds of the Rents.

[signature page follows]

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GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

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GRANTOR:
Rose Way LLC, a New York limited liability company

By: _____
Jonathan Bognacki, Manager

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Limited Liability Company ACKNOWLEDGMENT

STATE OF NEW YORK)
) SS
COUNTY OF SUFFOLK)

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On the 18th day of April in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared **Jonathan Bognacki, Manager of Rose Way LLC, a New York limited liability company** personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

By_____ My commission expires _____
Notary Public

ALLISON HUNTER
Notary Public, State of New York
No. 01HU6087635
Qualified in Nassau County
Commission Expires July 16, 2019

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RIDER TO MORTGAGE

This Rider is made part of that certain Mortgage dated April 18, 2019 between [redacted] LLC, a New York limited liability company ("Borrower") to GOLDMAN SACHS BANK USA, a New York chartered bank ("Lender").

The following provision is hereby added to the Mortgage:

LIQUIDITY COVENANT. So long as the Loan and any of the obligations set forth in the Related Documents remain outstanding, Borrower and Guarantor, in the aggregate, shall maintain (i) a minimum Net Worth (as defined herein) of not less than $3,800,000.00 and (ii) Liquidity (as defined herein) of no less than $500,000.00, which financial covenant shall be calculated by Lender no more than once per quarter. As used herein, "Net Worth" shall mean net worth as calculated in accordance with a cash basis accounting method, GAAP (or other principles acceptable to Lender) and "Liquidity" shall mean (a) unencumbered cash and cash equivalents of Borrower and/or Guarantor and (b) marketable securities of Borrower and/or Guarantor, each valued in accordance with a cash basis accounting method, GAAP (or other principles acceptable to Lender), each as determined by Lender in its reasonable discretion

The balance of the terms and conditions of the Mortgage shall remain unchanged.

Dated: April 18, 2019

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BORROWER:

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ROSEWAY LLC,
a New York Limited Liability Company

By: _____
Jonathan Bognacki, Manager

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SECOND RIDER TO THE MORTGAGE

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This Second Rider is made part of that certain Mortgage dated April 18, 2019 between ROADWAY LLC, a New York limited liability company ("Borrower") to GOLDMAN SACHS BANK USA, a New York chartered bank ("Lender").

The following provision is hereby added to the "POSSESSION AND MAINTENANCE OF THE PROPERTY" section of the Mortgage under "Removal of Improvements":

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Borrower shall not cause or permit any building or improvement upon the Premises to be removed, demolished or structurally altered, in whole or in part, or any fixture or article of personal property to be removed or destroyed, without the prior written consent of Lender except that Borrower shall have the right to remove and dispose of, free from the lien of this Mortgage, such equipment as from time to time may become worn out or obsolete or in the ordinary course of business, provided that either (1) simultaneously with or prior to such removal, any such equipment shall be replaced with other equipment of a value at least equal to that of the replaced equipment and free from any security agreement, and by such removal and replacement Lender shall be deemed to have subjected such equipment to the lien of this Mortgage, or (2) any net cash proceeds received from such disposition shall be paid over promptly to Lender to be applied to the last installments due on the indebtedness secured hereby, without any charge for prepayment.

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The balance of the terms and conditions of the Mortgage shall remain unchanged.

Dated: April 18, 2019

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BORROWER:

ROSE WAY LLC,
a New York Limited Liability Company

Not For Legal Use

By: _____
Jonathan Bognacki, Manager

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Not For Legal Use

Not For Legal Use

EXHIBIT A

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LEGAL DESCRIPTION

See Attached.

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FIRST AMERICAN TITLE INSURANCE COMPANY

Title Number: **NLT-28964-S-18**

SCHEDULE A DESCRIPTION

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ALL THAT certain plot, piece or parcel of land, situate, lying and being at Mecox, Town of Southampton, Suffolk County New York, more particularly described as Lot 10 on Subdivision Map of the Zebrowski Estate filed in the Suffolk County Clerk's Office on August 5, 1983, as Map No. 7213 being more particularly bounded and described as follows:

BEGINNING at a point on the westerly side of Rose Way distant the following 9 courses and distances from the extreme easterly terminus of a curve which curve has a radius of 25 feet and a length of 35.80 feet and connects the southerly side of Rose Way with the easterly side of Jobs Lane (Downs Lane):

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1) South 88 degrees 24' 07" East 247.40 feet;
2) South 62 degrees 25' 00" East 85.72 feet;
3) along the arc of a curve bearing in an Easterly direction having a radius of 430 feet a distance of 181.99 feet;
4) South 86 degrees 39' 58" East 50 feet;
5) along the arc of a curve bearing in an Easterly direction having a radius of 263 feet a distance of 169.07 feet;

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6) along the arc of a curve bearing in a southerly direction having a radius of 175 feet a distance of 222.97 feet;
7) South 23 degrees 10' 02" West 59.01 feet;
8) along the arc of a curve bearing in a Westerly direction having a radius of 40 feet a distance of 34.53 feet;

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9) along the arc of a curve bearing in a Southerly direction having a radius of 60 feet a distance of 56.98 feet to the point of beginning;

RUNNING THENCE from the point of beginning along the Westerly and Southerly sides of the Rose Way cul-de-sac along the arc of a curve having a radius of 60 feet a distance of 88.43 feet;

RUNNING THENCE South 30 degrees 55' 22" West 136.29 feet;

RUNNING THENCE South 52 degrees 41' 09" West 181.62 feet;

RUNNING THENCE North 67 degrees 04' 38" West 155 feet;

RUNNING THENCE North 29 degrees 52' 43" East 336.61 feet;

RUNNING THENCE South 71 degrees 47' 19" east 165 feet to the Westerly side of Rose Way the point or place of BEGINNING.